SUPREME COURT, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1319

FRANK E. HADDAD, JR. - - - Petitioner

VERSUS

UNITED STATES OF AMERICA - - Respondent

On Petition For Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

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PETITIONER'S RESPONSE TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1319

FRANK E. HADDAD, JR. - - - *Petitioner*

v.

UNITED STATES OF AMERICA - - *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONER'S RESPONSE TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Solicitor General correctly states in a Memorandum for the United States in Opposition that 28 U.S.C. 2101(c) requires a petition for a writ of certiorari in a civil case to be filed within ninety days, unless extended.

However, the Petitioner invites the Court's attention to 28 U.S.C. 2101(f) which modifies the effect of subsection (c). 28 U.S.C. 2101(f) states that,

> "In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree. . . ."

In the instant case, the final judgment or decree of the Sixth Circuit is subject to review by the Supreme Court on writ of certiorari. The execution and enforcement of that judgment or decree has been stayed by the Sixth Circuit for thirty days from March 2, 1976 to enable Petitioner to obtain a writ of certiorari from the Supreme Court (Pet. App. E).

Petitioner's petition was filed within the thirty day period and is, therefore, filed in accordance with 28 U.S.C. 2101(c) as modified by 28 U.S.C. 2101(f).

Also, because of the important implications for criminal practice and procedure presented by the Sixth Amendment issue raised in this petition, it may be that the Court will observe that timeliness, under this Court's rules in a criminal case [Rule 22(2)], is not jurisdictional, and does not bar this Court's exercise of discretion to consider this case. *Taglianetti* v. *United States,* 394 U. S. 316, 89 S. Ct. 1099, 22 L. Ed. 2d 302, 304, n. 1 (1969); *Durham* v. *United States,* 401 U. S. 481, 91 S. Ct. 858, 28 L. Ed. 2d 200, 202 (1971).

Because the petition has been filed within the time limit of 28 U.S.C. 2101(c) as modified by 28 U.S.C.

2101(f), and because this petition presents a Sixth Amendment question with important implications for criminal practice and procedure such that timeliness would not be jurisdictional under this Court's Rule 22(2), the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 1976